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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

DENNIS MONTGOMERY, an individual; and  
MONTGOMERY FAMILY TRUST, a California  
Trust,

Plaintiffs,

vs.

ETREPPID TECHNOLOGIES, L.L.C., a Nevada  
Limited Liability Company; WARREN TREPP,  
an individual; DEPARTMENT OF DEFENSE of  
the UNITED STATES OF AMERICA; and  
DOES 1 through 10,

Defendants.

\_\_\_\_\_  
AND RELATED CASE(S)  
\_\_\_\_\_

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Case No. 3:06-CV-00056-PMP-VPC  
**Base File**

3:06-CV-00145-PMP-VPC

**ETREPPID'S AND TREPP'S  
MOTION FOR CONTEMPT;  
REQUEST FOR ORDER  
SHORTENING TIME**

**ETREPPID'S AND TREPP'S MOTION FOR CONTEMPT;  
REQUEST FOR ORDER SHORTENING TIME**

eTreppid Technologies, L.L.C., and Warren Trepp, (hereinafter collectively referred to as "eTreppid"), by and through their counsel Holland & Hart LLP, hereby submit their Motion for Contempt. This Motion is supported by the following Memorandum of Points and Authorities.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

On May 26, 2009 this Court issued an Order (Doc. No. 1054) granting eTreppid's Motion to Compel the production of a number of separate categories of documents. On May 6, 2009, Montgomery's counsel provided a CD which, Montgomery claimed, contained all responsive documents with Montgomery's possession, custody, and control. However, as set forth below, the evidence clearly shows that Montgomery has failed to produce a number of responsive documents that lie within his possession, custody, and control.

Montgomery's refusal to provide these documents is part of the judgment debtors' ongoing refusal to either comply with their obligations under the September 2008 Settlement Agreement or to participate meaningfully in discovery. Instead, Montgomery has elected to simply ignore this Court's order compelling further discovery. Contempt sanctions are clearly appropriate.

**II. STATEMENT OF RELEVANT FACTS**

eTreppid propounded the Requests for Production of Documents at issue in this case on February 23, 2009. On April 10-13, 2009, Montgomery provided, via electronic mail, certain responsive documents. These responsive documents included bank statements, certain credit card bills, and a smattering of other responsive documents. These documents were not Bates Numbered. The parties subsequently engaged in an unsuccessful effort to meet and confer, and on April 9, 2009, eTreppid filed a Motion to Compel [Doc. No. 1004].

Even after the Motion to Compel was filed, the parties continued to discuss Montgomery's efforts to produce documents. On Friday, April 24, 2009, the undersigned counsel for eTreppid spoke telephonically with counsel for Montgomery. The contents of this

1 conversation were confirmed in a letter dated Monday, April 27, 2009. A true and correct copy  
2 of this letter is attached hereto as **Exhibit 1**. In that conversation, counsel for Montgomery  
3 indicated that, although Montgomery did not automatically receive copies of cancelled checks  
4 from his bank, he was in the process of obtaining such documents. In addition, Montgomery's  
5 counsel stated that a number of other documents would be produced as soon as Montgomery was  
6 able to locate them.

7 As of May 6, 2009, Montgomery had still not produced any additional responsive  
8 documents, and eTreppid therefore filed its Notification to Court to Proceed with Motion to  
9 Compel [Doc. No. 1030]. On May 21, 2009, Montgomery provided a CD with responsive  
10 documents. A true and correct copy of the letter enclosing this CD is attached hereto as **Exhibit**  
11 **2**. The documents on this CD were likewise not Bates numbered. However, it appears that the  
12 vast majority of the documents contained on this CD were previously produced via email.

13 Montgomery has still failed to produce a number of documents that are certainly within  
14 his possession, custody, and control. These documents include:

- 15 • Copies of cancelled checks;
- 16 • Current and complete bank statements;
- 17 • Documents demonstrating the manner in which Montgomery disposed of  
18 nearly \$600,000.00 in deposits made in early 2009.
- 19 • Electronic financial records, such as Quicken or QuickBooks files;
- 20 • Promissory notes and current statements from any real estate mortgages;
- 21 • Evidence of life insurance.
- 22 • Promissory notes for any vehicle or personal loans;
- 23 • Documents relating to credit applications and marker play at Casinos; as well  
24 as documents reflecting payments from Casinos or obligations owed Casinos;  
25 and
- 26 • Paystubs or other evidence of payments received from Blxware.

27 eTreppid needs these documents to prepare to take the judgment debtor exam of Mr.  
28 Montgomery, which is scheduled for June 26, 2009. Montgomery's failure to comply with this

1 Court's previous order requiring production of these documents is a blatant and improper attempt  
2 to prevent eTreppid from taking discovery necessary to execute its judgment against  
3 Montgomery.

4 **III. ARGUMENT**

5 A. Montgomery Has Failed to Provide Documents As Ordered By This Court

6 It is undisputable that Montgomery has failed to produce documents that this Court  
7 explicitly ordered him to produce. Montgomery asserts that he has produced all documents  
8 within his possession, custody, and control. However, this is plainly not the case.

9 It is well settled that "control" of a document, under Fed. R. Civ. P. 34, is to be broadly  
10 construed so that a party may be obliged to produce documents even though it is not in actual  
11 possession of the document. *Poole v. Textron, Inc.*, 192 FRD 494 (Md. 2004). Thus, a party is  
12 deemed to have control of a document so long as that party has "a legal right or ability to obtain  
13 documents from another source on demand." *Mercy Catholic Med. Ctr. v. Thompson*, 380 F.3d  
14 142 (3d Cir. 2004).

15 Here, while Montgomery may not currently be in possession of the subject documents, he  
16 clearly has the legal right and ability to obtain these documents. Indeed, on April 24, 2009,  
17 Montgomery's counsel indicated that Montgomery was in the process of obtaining copies of  
18 cancelled checks. Montgomery clearly has a legal right to obtain copies of all the above-listed  
19 documents. Montgomery could have obtained bank records, paycheck stubs, mortgage  
20 information, and the remaining requested information by simply asking that the entity in actual  
21 possession of the subject records provide him with copies. However, Montgomery apparently  
22 has not taken even this step. Montgomery has had well over two months to obtain these records  
23 since eTreppid propounded its initial requests for production, but apparently has taken no steps  
24 to do so.

25 B. Montgomery Should Be Subject to Contempt Sanctions for His Failure to Provide  
26 These Documents

27 Fed. R. Civ. P. 37(b)(2)(vii) provides that, where a party fails to comply with a court  
28 order requiring discovery, the Court may impose sanctions, including "treating as contempt of

1 court the failure to obey any order except an order to submit to a physical or mental  
2 examination.” Here, Montgomery has plainly failed to comply with this Court’s May 26, 2009  
3 Order. Because this case has been settled, neither issue sanctions nor claim sanctions will have  
4 any effect. Mere monetary sanctions are unlikely to have a significant effect on Montgomery;  
5 he, along with the remaining Judgment Debtors, already owe the eTreppid Parties in excess of  
6 \$25 million. Moreover, this Court has already held that Montgomery will be sanctioned for the  
7 cost of bringing the Motion to Compel which resulted in this Court’s May 26, 2009 Order.  
8 Accordingly, significant contempt sanctions are necessary to compel Montgomery’s compliance  
9 with this Court’s May 26, 2009 Order.

10 C. eTreppid Requests that this Motion Be Heard on Shortened Time

11 Montgomery’s Judgment debtor’s exam is set for June 26, 2009. eTreppid must have an  
12 opportunity to review the subject documents prior to this exam. Accordingly, eTreppid requests  
13 that this Court hear the present motion on shortened time by requiring that any opposition to the  
14 present motion be filed on or before Wednesday, June 17, 2009, with any reply in support of this  
15 motion to be filed on or before Friday, June 19, 2009.

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1 **IV. CONCLUSION**

2 For the reasons set forth above, eTreppid respectfully requests that the Court grant the  
3 present Motion for Contempt and order that the present motion be heard on shortened time.

4 Dated: June 12, 2009.

5  
6 /s/

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**PROOF OF SERVICE**

I, Cynthia L. Kelb, declare:

I am employed in the **City of Reno, County of Washoe, State of Nevada**, by the law offices of Holland & Hart LLP. My business address is: **5441 Kietzke Lane, Second Floor, Reno, Nevada 89511**. I am over the age of 18 years and not a party to this action. I am readily familiar with Holland & Hart LLP's practice for collection of mail, delivery of its hand-deliveries and their process of faxes.

On June 12, 2009, I caused the foregoing **ETREPPID'S AND TREPP'S MOTION FOR CONTEMPT; REQUEST FOR ORDER SHORTENING TIME** to be:

X filed electronically with the U.S. District Court and therefore the court's computer system has electronically delivered a copy of the foregoing document to the following person(s) at the following e-mail addresses:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on June 12, 2009.

/s/  
Cynthia L. Kelb

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